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UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA.

Plaintiff.

VS.

MONICA PESINA,

Defendant.

4:19-CR-06063-SMJ-1

United States' Response to Defendant's Motion to Revoke Detention

Plaintiff, United States of America, by and through William D. Hyslop, United States Attorney for the Eastern District of Washington, Stephanie Van Marter, Assistant United States Attorney for the Eastern District of Washington, submits the following Response to Defendant's Motion to Revoke Detention. (ECF No. 58).

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11

11

Introduction

On October 22, 2019, the Defendant was charged by way of criminal complaint charging her with Possession with the Intent to Distribute 50 grams or More of Actual Methamphetamine. (ECF 1). On November 7, 2019, the Defendant along with her Co-Defendant Nick CARTER, were Indicted on multiple counts, the Defendant named in Counts 1 and 2. (ECF 11). The Defendant made her initial appearance on November 8, 2019. The United States filed a motion for Pre-Trial detention and the detention hearing was set for November 12, 2019 before Magistrate Judge Dimke. The initial Pre-Trial services Report was provided November 8, 2019 and a supplement was prepared for the November 12, 2019 hearing. (ECF 22, 37). Defendant moved to continue the detention hearing and it was reset to November 18, 2019.

On November 18, 2019, the use of detention was argued. At that hearing, the United States advised the Magistrate court of a series of criminal acts and encounters involving the Defendant and her Co-Defendant from June 2019 up until the time of their arrest in early November. As was communicated to the Defendant and counsel, the United States intends on seeking an additional Indictment based upon this new criminal behavior¹. However, defense counsel asked the United States to consider waiting until there could be an opportunity to determine if resolution was possible.

At the conclusion of the November 18, 2019 hearing, Magistrate Judge Dimke ordered the Defendant to be detained pending trial, finding that the United

¹ It is important to note the parties discussed this new Indictment and the United States agreed to hold off until preliminary discussion could begin as to potential resolution acknowledging that it would be included in any resolution as relevant conduct. Thus, whether it is a formal Indictment or not, it is still relevant for consideration in any detention hearing and subsequent plea and sentence.

1 States showed by a preponderance of evidence that the Defendant presented a
2 flight risk and by clear and convincing evidence that the Defendant presented a
3 danger to the safety of the community. (ECF No. 48). The Magistrate Court
4 further made detailed findings,

5
6 Defendant is charged with possession with intent to distribute methamphetamine and heroin. The United States alleged that
7 Defendant has been involved in a series of incidents with law enforcement beginning in June 2019, when she was stopped in a
8 vehicle with her co-Defendant. The complaint alleges that a firearm was located on the co-Defendant and that \$27,000 cash, a
9 substantial amount of methamphetamine and heroin, and drug-trafficking related items including a digital scale and ziploc bags were
10 located in the vehicle. Thereafter, it was proffered that law enforcement searched Defendant's home in September 2019 and located
11 similar evidence of drug trafficking, including substantial amounts of methamphetamine, fentanyl-laced pills, heroin, and marijuana
and multiple firearms. It was alleged that Defendant, knowing a warrant had been issued for her arrest, hid in a friend's residence in
Dixie, Washington in an effort to evade law enforcement. During a November 2019 search of the Dixie residence, it was proffered that
law enforcement located both Defendants, two firearms, a substantial amount of narcotics, a scale, cell phones, and other evidence
indicative of drug trafficking. These allegations are serious; the quantity and nature of the drugs involved, coupled with the presence of
firearms on three separate occasions, are indicative of danger to the community. In addition, Defendant's attempt to evade law
enforcement and the lengthy term of imprisonment she would face if convicted on these charges heightens the risk of nonappearance.

12 The weight of the evidence is the least important factor, but appears to be sufficiently strong to raise a concern regarding danger to
the community and risk of nonappearance based on the United States' proffer, which included details gathered from lengthy
Investigations and evidence resulting from the execution of search warrants.

13 Defendant is 40 years old and was born in Walla Walla, Washington. She has lived in this District her entire life and has resided in the
14 Tri-Cities area for the past 12 years. She has ties to the community. Her mother resides in Walla Walla and one of her siblings resides
in Spokane; she has limited contact with them. She has three children, ages 22, 11, and 9, who resided with her prior to her arrest.
15 Before that, her children resided with her sporadically, at times residing with their aunt (including for a period of five years). Defendant
does not have stable employment and reports being self-employed for the past five years. She was evicted from her apartment on
November 14, 2019. Defendant struggles with substance abuse; she obtained an evaluation and intensive outpatient treatment was
recommended. She expressed willingness to engage in treatment and plans to reside in clean and sober housing if granted release.
16 While the Court agrees that substance abuse must be addressed, it finds that it cannot safely grant her release on this record.
Defendant's criminal history involves similar controlled substance violations (two prior convictions) and the Court notes that she has
17 stated to family members that she will always be a drug dealer. The recent allegations of Defendant's participation in substantial
narcotics trafficking, involving firearms and fentanyl-laced pills, despite two law enforcement interventions, combined with Defendant's
18 efforts to hide from law enforcement give this Court insufficient assurance that Defendant will abide by any conditions it sets to ensure
the safety of the community or her appearance at court proceedings. On balance, the Court finds that the presumption of detention
19 has not been rebutted.

20 *Id.*

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1 For the reasons set forth herein, the United States submits that the Defendant
2 is a demonstrated flight risk and a danger to the community. The Defendant has
3 failed to present any new or additional information that was not otherwise
4 considered by Magistrate Judge Dimke. Accordingly, the United States requests
5 that this Court maintain the Magistrate Judge's Order and deny the Defendant's
6 request for release.

7

8 **I. The Facts of the Instant Case**

9 The Defendant has been charged in the Eastern District of Washington with
10 Possession with the Intent to Distribute 50 Grams or More of Actual (Pure)
11 Methamphetamine and Heroin. Due to the serious nature of the charges in the
12 Indictment, the Defendant faces a mandatory minimum sentence of 10 years in
13 prison and up to a statutory maximum of life. As also noted above, there is
14 additional criminal conduct which is being pursued which would allege additional
15 mandatory minimum drug offenses.

16 There are a series of events that occurred between the time of the Defendant
17 first contact with law enforcement and the Defendant arrest that are relevant for
18 this Court review of Magistrate Dimke's Order. The Defendant attempts to argue
19 this conduct should not be considered because is outside the "offense charged
20 pursuant to 18 U.S.C. § 3142(g)(1). The Defendant however wholly ignores the
21 other provisions of the Bail Reform Act which includes the ability to present
22 evidence as to the Defendant's overall risk to the community, risk of flight,
23 seriousness of the offense and history and characteristics. *Id* at (e) and (f). Note of
24 which are limited to the counts within the indictment. Thus, the following is the
25 timeline of criminal activities presented to Judge Dimke are likewise important and
26 relevant for this Court's review:

1
2 **- INDICTMENT #1: (PESINA AND CARTER)**
3
4

5 On ***June 4, 2019***- On June 4, 2019, Pasco Police Sgt. William Parramore
6 initiated a traffic stop on a vehicle for a moving violation. The driver of the vehicle
7 was identified by Washington driver's license as the Defendant. There were two
8 additional occupants in the vehicle, identified as Carter and Bobbie Roche
9 (08/10/19XX).

10 Pasco Police Detective Andy Corral recognized the Defendant's name when
11 it was checked over the police radio. Det. Corral was familiar with the Defendant
12 based upon several prior drug related investigations when Det. Corral was a
13 member of the METRO drug task force and the DEA drug task force. Det. Corral
14 responded to the scene with his K9 Ezra. Det. Corral applied his K9 Ezra to the
15 exterior vehicle. K9 Ezra alerted for the presence of narcotics inside of the
16 vehicle.

17 During the course of the traffic stop, and while officers were interacting with
18 the occupants of the vehicle, Carter was found to be in possession of a loaded Hi-
19 point 9mm handgun. Carter was also in possession of approximately one ounce of
20 methamphetamine. Carter admitted to officers that he was a convicted felon and as
21 such could not legally possess firearms. Carter was arrested for Unlawful
22 Possession of a Firearm and Possession of a Controlled Substance.

23 Det. Corral advised the Defendant of her Miranda Rights. The Defendant
24 waived her rights and made a statement. The Defendant denied there were any
25 controlled substances in the vehicle, despite the K9 alert. The Defendant would not
26 answer when she was asked the question a second time. The Defendant and Roche
27 were released from the scene. The vehicle was impounded pending the application
28 for a state search warrant.

1 On June 5, 2019, Det. Corral secured a search warrant for the vehicle. Inside
2 of the trunk, Pasco Police Officer Nathan Carlisle, located a red Eddie Bauer
3 backpack. The backpack contained \$26,950.00 in US currency, four bags of
4 suspected methamphetamine, and a black tar like substance. The
5 methamphetamine weighed approximately 371.85 grams (13.1 ounces) and the
6 black tar substance weighed approximately 54.75 grams (1.9 ounces). Officer
7 Carlisle also located a digital scale and several empty Ziploc baggies in the
8 backpack. The substances were field tested and yielded a presumptive positive
9 result for the presence of methamphetamine and heroin.

10 Additionally, items of dominion for Pesina were found in the same backpack
11 as the narcotics. They included a Visa debit card, a Community Health Plan card,
12 and a HAPO Community Credit Union Receipt. All of these items were in Pesina's
13 name.

14 The firearm seized from CARTER was subsequently examined by SA
15 Northcutt who concluded the firearm has been transported in interstate and foreign
16 commerce.

17
18 **-POTENTIAL INDICTMENT #2:**

19 During the same time period (summer 2019), Spokane Special Investigations
20 Unit (SIU) began an investigation after the Defendant and CARTER were
21 identified as pound level methamphetamine distributors. During the course of that
22 investigation, several addresses were identified as being utilized by the Defendant
23 and CARTER: a house in Spokane located 4203 E. Wellesley Spokane WA and
24 1416 S. Thayer Dr., Richland WA. During this investigation, law enforcement
25 engaged in two controlled buys of pound quantities of methamphetamine on each
26 occasion from the Defendant and CARTER. It culminated in obtaining state
27 search warrants for both residential locations on ***September 27, 2019.***

1 During the execution of the search warrant at the Thayer address, law
2 enforcement located and seized approximately 5 ounces of methamphetamine; 4
3 ounces of heroin, 15 Fake Oxy pills believed to contain Fentanyl, multiple
4 firearms; 30 pounds of marijuana and indicia belonging to the Defendant and
5 CARTER. The Defendant and CARTER were located in Richland that same day
6 and arrested. During the execution of the search warrant at the Wellesley address
7 in Spokane, law enforcement located and seized indicia belonging to both the
8 Defendant and CARTER and multiple cellular telephones.

9 During this investigation, Spokane SIU investigators learned of the above
10 referenced traffic stop and began to de-conflict the dual investigations. The
11 Defendant and CARTER again bonded out from that state arrest. It was also
12 during this time period (late September 2019) the cases were collectively being
13 brought to the attention of the assigned AUSA as they were both state
14 investigations.

16

17 **-CARTER INDICTMENT #2**

18 On *October 18, 2019*, TFO Brazeau, Northcutt and Laffey spoke with
19 Spokane Police Department (SPD) Special Investigations Unit (SIU) Sergeant
20 Zach Dahle, and learned SPD Patrol Officers had arrested Nick Carter on October
21 5, 2019, after bonding out on his previous arrests in Pasco and Spokane; again in
22 possession of another firearm. SA Northcutt received copies of the SPD reports
23 for this incident and reviewed them. The reports include the following
24 information:

25 Patrol Officers Elijah Hayward, Tyler Heiman and Corrigan Mohondro are
26 employed as police officers for the City of Spokane, WA. These officers were
27 working on October 4, 2019 at 2336 hours, into the early morning hours of
28 October 5, 2019 and were dispatched to the area Myrtle/ Rich in Spokane reference

1 a person with a weapon. The 911 reporting party, hereafter referred to as Victim 1
2 called SPD to report six subjects were standing around his/her vehicle at the
3 location. One person was hitting his/her vehicle with a bat. Victim 1 further
4 reported that the individuals had pulled a gun and knife on her in the past. Victim 1
5 described two of the involved subjects as a white female in her 20's and a white
6 male 20-40 years old with a "camouflage hoody and jeans."
7

8 According to Officer Hayward's report, as he drove into the area, he
9 observed a white male wearing a black jacket and blue jeans walking eastbound on
10 Wellesley from Myrtle at a fast pace. Officer Hayward reported that the subject
11 appeared to be holding something in his left hand. Officer Hayward further
12 reported that the male looked back at his marked SPD patrol vehicle and turned
13 away. Based on the proximity to the original call, the hurried pace the male was
14 walking at, the similar physical description to one of the involved males, and the
15 fact that there were no other people walking in this location at this time of night,
16 Officer Hayward believed this individual was likely involved in the person with a
17 weapon call.

18 Officer Hayward illuminated the male with his spot lamp. The male looked
19 back at Ofc. Hayward again and continued to walk away. Ofc. Hayward saw the
20 subject conceal an object in his left hand. Ofc. Hayward asked the male what was
21 in his hand. The male replied, "nothing," and continued to walk. Ofc. Hayward
22 then asked the male to stop and talk to him. Ofc. Hayward reported at that time, the
23 male took off running east on Wellesley and then north on Florida. Ofc. Hayward
24 reported he was still holding the object in his left hand.
25

26 Ofc. Hayward reported that as the subject ran north on Florida, he switched
27 the object to his right hand and continued to run. Believing the subject had a
28 weapon, Ofc. Hayward stayed a safe distance behind him and followed him in his
patrol vehicle. Ofc. Hayward activated the full overhead light bar as he followed

1 the subject, waiting for other units to respond before he attempted to detain him.
2 Ofc. Mohondro reported that he also responded to assist Ofc. Hayward in the
3 pursuit of the male subject.

4 Officers Hayward reported that the male ran into a fenced driveway on the
5 west side of Florida, north of Wellesley, and threw the object he was holding
6 against the fence. Officer Hayward reported that the male then ran to the gate and
7 threw a second object down on the ground. Officer Mohondro saw the male drop a
8 black case in the weeds by the fence. Officers Hayward and Mohondro reported
9 that they gave the subject commands and he complied. He was detained in
10 handcuffs. Officer Heiman reported that he was tasked with checking the area
11 where the male threw the object against the fence and found a loaded Glock, model
12 23, .40 caliber pistol. He and Officer Mohondro checked the location where the
13 male threw the other object and found a black pouch. Inside was a ziplock bag with
14 a large quantity of a substance resembling methamphetamine and another ziplock
15 bag with a substance resembling heroin. Ofc. Hayward positively identified the
16 male as Nicholas Sean Carter-Sanford.

17 Sgt. Dahl examined the controlled substances, tested and weighed them and
18 reported that there was a distribution quantity (approximately 2 ounces-later
19 weighed 54.7 grams) of what tested positive for methamphetamine and a piece of
20 heroin (later weighed 7.3 grams). A search of Carter-Sanford's person, incident to
21 his arrest, revealed three cellular phones (all powered on and appeared to be
22 functional) and \$644 cash.

23 SA Northcutt is familiar with Nicholas Carter from a prior ATF
24 investigation which resulted in Carter pleading guilty to a violation of 18 USC
25 922(g)(1) Felon in Possession of a Firearm, in the United States District Court for
26 the Eastern District of Washington. Carter was sentenced in that case on June 3,
27 2010, and sentenced to 57 months incarceration in Federal prison.

1 Based upon the above continuous criminal activities of both the Defendant
2 and CARTER, the United States Attorney's Office obtained criminal complaints
3 and arrest warrants. The warrants were entered into the system and also turned
4 over to the United States Marshal's Service. Between October 22, 2019 and the
5 date of their arrest November 8, 2019, the Marshals and the law enforcement
6 entities involved in the above investigation tried to locate the Defendant. It was
7 reported to law enforcement, that the Defendant and CARTER were aware
8 warrants were coming and left the area to law low.
9

10 **- POTENTIAL INDICTMENT #3**

11 In early November 2019, SA Bach with Yakima ATF, who were at the time
12 unaware of the investigations out of Richland and Spokane of the Defendant, came
13 into contact with a confidential source who identified the Defendant and her
14 "boyfriend", later confirmed to be CARTER, as distributing narcotics out of a
15 residence in Dixie WA. Upon running the Defendant's name, SA Back contacted
16 FBI Safe Streets TFO Brazeau and SA Northcutt and learned of the other
17 investigations. That same day, SA Bach learned the USMS was actively looking
18 for the Defendant and CARTER. SA Bach shared the information that ATF CI had
19 provided. The USMS had already set up surveillance on the Dixie Target Address
20 and observed CARTER in the front yard earlier during the day.
21

22 At approximately 1630 hours ***November 7, 2019***, law enforcement
23 responded to the Target Address where CARTER was again observed in the front
24 yard. CARTER was observed working under a black pickup. CARTER was taken
25 into custody without incident. USMS Deputy Marshal Bill Peary conducted a
26 search incident to arrest and located suspected methamphetamine and suspected
27 cocaine in CARTER's pants pocket. There was also a phone located underneath
28 the vehicle.

1 The Defendant was then called out of the residence. The Defendant did not
2 initially comply but did exit the residence a short time later and was taken into
3 custody without incident. There was no one else located inside the residence.
4 Further, based upon items located inside the house, it is believed the Defendant
5 was inside the living room when law enforcement contacted her.

6 SA Bach contacted the leaser of the Target Address, who advised he had left
7 at approximately at noon on the day of the state search warrant. The leaser of the
8 house advised that the Defendant and CARTER showed up at his house
9 approximately four days earlier. He further stated the Defendant and CARTER
10 stayed everywhere inside the house. Detective Mike Bump applied for and
11 obtained a state search warrant for the residence based upon the aforementioned
12 facts. A state search warrant was granted and executed on the Target Address.

14 During a search of the spare bedroom, the following items were located:
15 Glock, Model 26 GEN 4 9mm pistol, bearing serial number BBTU921, with
16 loaded magazine; a Beretta, Model 92FS 9mm pistol, bearing serial number
17 BER513205, with loaded magazine; (later determined to be stolen); \$3850 in
18 United States currency found in the side pouch of a blue and gray backpack which
19 was sitting next to the clothes bin containing the two firearms; CARTER's
20 insurance card, a prescription pill bottle with CARTER's name on it, and a hand
21 written phone list found in the side pound of the blue and grey backpack.

22 During a search of the master bedroom, SPD Detective N. Lundgren located
23 approximately 1.6 grams of suspected methamphetamine located in the closet on
24 top of a dresser. During a search of the extra space/ living room, the following
25 items were located: Approximately 5 grams of suspected methamphetamine
26 (original packaged weight) found on the couch; a glass pint size jar with several
27 shards of suspected methamphetamine was found in a yellow tool bag under the
28 coffee; Visa credit card with PESINA's name on it was found on the top of the

1 coffee table; and three cellular phones. (The credit card was approximately three
2 feet from three cell phones).

3 Below the coffee table was a shoe box. The following items were found
4 inside the shoe box: approximately 2.3 grams of suspected cocaine (original
5 packaged weight), approximately 113 grams of suspected methamphetamine
6 located in four separate bags (original packaged weight), approximately 101.4
7 grams of suspected heroin (original packaged weight), approximately 84 blue "M"
8 "30" pills, suspected of containing fentanyl, electronic digital scale with white
9 residue located on the top; plastic zip lock bags believed to be used for packaging
10 material of controlled substances and; various controlled substance smoking pipes.
11

12 After the Defendant's arrest, TFO Brazeau and FBI TFO BJ Moos with FBI
13 Safe Streets Task Force in TriCities, WA, conducted a post Miranda interview with
14 her. During this interview, the Defendant admitted the methamphetamine located
15 inside the residence belonged to her. The Defendant also admitted to her
16 involvement in drug distribution and ownership of the narcotics from the June
17 traffic stop.

18

19 **II. Jurisdiction of the Court to Review Detention**

20 Magistrate Judge Dimke's release Order regarding the Defendant is subject
21 to review by this Court pursuant 18 U.S.C. §3145(b). This Court has original
22 jurisdiction over the offense charged in the Indictment and therefore the power to
23 determine whether the Defendant has overcome the presumption of detention that
24 applies in this case. Specifically, 18 U.S.C. §3145(b) provides in relevant part:

25 If a person is ordered detained by a magistrate judge, or by
26 a person other than a judge of a court having original
27 jurisdiction over the offense and other than a Federal
28 appellate court, the person may file, with the court having
original jurisdiction over the offense, a motion for

1 revocation or amendment of the order. The motion shall
2 be determined promptly.

3 18 U.S.C. § 3145(b).

5 **III. Presumption of Detention - 18 U.S.C. § 3142(e)**

6 The Bail Reform Act governs detention of a defendant pending trial and
7 provides that a person should be released pending trial unless the court “finds that
8 no condition or combination of conditions will reasonably assure the appearance of
9 the person as required and the safety of any other person and the community.” 18
10 U.S.C. § 3142(e). Where, as the grand jury found here, there is probable cause to
11 believe that the Defendant distributed and possessed 50 grams or more of actual
12 methamphetamine and heroin, there is a rebuttable presumption that “no condition
13 or combination of conditions will reasonably assure the appearance of the person
14 as required and the safety of the community.” 18 U.S.C. § 3142(e). Although the
15 presumption shifts the burden of production to the defendant, the burden of
16 persuasion remains with the government. *See, e.g. United States v. Hir,* 517 F.3d
17 1081, 1086 (9th Cir. 2008).

18 It is important to note that “the presumption is not erased when a defendant
19 proffers evidence to rebut it; rather, the *presumption remains* in the case as an
20 evidentiary finding mitigating against release, to be weighed along with other
21 evidence relevant to factors listed in § 3142(g).” *Id.* (citing *United States v.*
22 *Dominguez*, 783 F.2d 702 (7th Cir. 1986) (involving drug trafficking)) (emphasis
23 added); *United States v. Mesher*, 707 F.Supp. 1224, 1225 (D. Or. 1989) (citing
24 *United States v. Palmer-Contreras*, 835 F.2d 15, 18 (1st Cir. 1987) (even if the
25 defendant offers some evidence in rebuttal, the presumption of flight does not
26 disappear, but rather “retains evidentiary weight—the amount depending on how
27 closely defendant's case resembles the congressional paradigm”); *United States v.*
28

1 *Martir*, 782 F.2d 1141, 1144-45 (2d Cir. 1986) (holding that even after a defendant
2 charged with a drug crime rebuts the presumption, the court must continue to give
3 the presumption weight in deciding whether the defendant should be detained
4 pending trial).

5 The government retains the ultimate burden of persuasion on both issues.
6 To detain the Defendant, the Court must be convinced either (1) by clear and
7 convincing evidence that the defendant presents a danger to the community, or (2)
8 by a preponderance of the evidence that he is a flight risk. *United States v.*
9 *Mercedes*, 254 F2d. 433, 436 (2nd Cir. 2001).

10 Importantly, when it enacted the Bail Reform Act, Congress held hearings
11 and concluded that defendants involved in drug trafficking posed a particular risk
12 of flight. It found that drug traffickers often establish contacts in other countries
13 which would allow them to flee with relative ease. Moreover, due to the lucrative
14 nature of drug trafficking, Congress concluded that the forfeiture of a bond is
15 simply the cost of doing business. *See generally* S. Rep. No 225, 98th Cong. 1st
16 Sess. 20 (1983) *reprinted in* 1984 U.S. Code Cong. & Admin.News pp.23-24; *See*
17 *also United States v. Jessup*, 757 F.2d 378, 380-385 (1st Cir. 1985).
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19

20 **IV. The United States Position on Appeal**

21 *a. The Defendant has not overcome the Presumption of Detention*

22 The United States submits that the Defendant has not rebutted the
23 presumption of dangerousness and risk of flight contained in 18 U.S.C. § 3142(e).
24 The Defendant has not provided sufficient evidence that the Defendant is not a
25 flight risk.

26 The Defendant has proffered a number of factors to try and rebut the
27 presumption:

1 Here, Defendant Pesina is not a flight risk because (1) she is a
2 U.S. citizen and has lived in Walla Walla or the Tri-Cities her entire
3 life, (2) she does not have a passport and has only travelled out of
4 state on rare occasions, (3) her two minor children reside in
5 Kennewick, Washington, (4) she does not have a history of failing
6 to appear for Court, (5) she did not flee the jurisdiction after being
7 detained following the June 2019 traffic stop, (6) she has no history
8 of violence, (7) she has no history of firearm violations, (8) her
9 release plan includes attending intensive outpatient substance
10 abuse treatment, (9) her release plan includes residing in a clean
11 and sober residential facility, (10) she has a valid driver's license,
12 (11) she has an operational vehicle, and (12) her best friend is
13 supportive and has been clean and sober for three years. Defense
14 counsel is not alone in this determination—the most recent pretrial
15 services report also recommends release on conditions. ECF No. 46

16 ECF 58 at page 5

17 However, as noted by the Magistrate Court, these factors do not overcome
18 the fact that the Defendant despite law enforcement arrest and intervention,
19 continued to engage in serious criminal behavior to include the possession of
20 distribution quantities of multiple narcotics and the possession of multiple
21 firearms. The Defendant was also in possession of distribution quantities of
22 Fentanyl laced pills on multiple occasions, the most dangerous and deadly drug in
23 our community.

24 It is also important to note that none of these additional facts were known
25 and therefore, not considered by probation when the Pre-Trial Services Report was
26 prepared. As Magistrate Judge Dimke noted, the Defendant's reliance on their
27 recommendation for release is therefore misplaced as their recommendation was
28 not based upon complete information.

1 Moreover, a review of the Defendant's criminal history as well as
2 information provided by the Defendant's family reflect a pattern and history of
3 continuous involvement in drug distribution and drug abuse. (ECF 22 and 37). It
4 is this same pattern that is also reflected in the Defendant's continuous behavior
5 from June until the time of her arrest in November 2019. This pattern of continued
6 serious criminal behavior, despite court and law enforcement intervention, makes
7 her a danger to the community.

8 The Defendant seems to argue that because there was a delay between the
9 state traffic stop in June and the criminal complaint in October, the United States
10 must not have considered the Defendant a danger to the community since she
11 remained in the community. To the contrary, as indicated, each of the contacts by
12 law enforcement were separate state investigations. All the state investigations
13 were immediately referred to the respective state prosecutor's offices for charges.
14 It was not until the differing jurisdictions de-conflicted the matters did they learn
15 of the full scope of the Defendant and CARTER's crime spree, for lack of a better
16 term. When a Defendant engages in criminal activity across multiple jurisdictions,
17 it is more difficult to put all the pieces together. Such is an aggravating factor and
18 in no way leads to the conclusion the Government did not see the Defendant or
19 CARTER as a danger. To the contrary, the facts before the Court more than
20 establish the Defendant's danger to the public.

22 The Defendant is likewise a risk of flight. Aside from the fact that the
23 Defendant has a history of failure to appear to include two failure to appears in a
24 2017 state matter (ECF 22), this is the first time the Defendant has faced
25 mandatory minimum federal drug charges. When faced with the possibility of
26 multiple drug related state arrest warrants, the Defendant left the area to include
27 her children to "lay low." While "laying low", the Defendant continued to engage
28 in drug trafficking and did so while in the possession of multiple firearms. The

1 Defendant was able to evade arrest for several weeks hiding out in a separate town.
2 It is more than reasonable to conclude that her flight risk is far greater now facing
3 mandatory minim federal offenses given these facts.

4 The Defendant's proffered release plan, which is not specific in terms of
5 residence, treatment or other special conditions, is simply inadequate to address
6 these concerns and does not overcome the presumption.
7

8 Assuming *arguendo* that the Defendant has met their burden of production,
9 the United States has produced sufficient evidence that supports continued
10 detention of the Defendant pursuant to 18 U.S.C. § 3142.

11 b. 18 U.S.C. § 3142(g) Factors Support Detention

12 Even if the Court finds the Defendant has overcome the presumption of
13 detention, the United States respectfully submits that the factors outlined in 18
14 U.S.C. § 3142(g) still weigh in favor of the Defendant's detention. As the Ninth
15 Circuit has noted, the presumption of detention remains an "evidentiary finding
16 mitigating against release, to be weighed along with other evidence relevant to
17 factors listed in § 3142(g)." See e.g., *Hir*, 517 F.3d at 1086.

18 1) Nature and Circumstances of Offense

19 First, as outline above, the nature and circumstances of the offense charged
20 are exceptionally serious. This factor favors detention.
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1 2) *Weight of the Evidence*

2 The weight of the evidence against Defendant is strong. In each law
3 enforcement investigation, search warrants were obtained leading to the seizure of
4 substantial quantities of various narcotics and firearms. The Defendant also
5 provided a post Miranda statement admitting to her continuous involvement in
6 drug distribution. While case law dictates that this prong is the “least important”
7 factor, the Court must “consider the evidence in terms of the likelihood that
8 [Defendant] will pose a danger” as well as whether the evidence is strong and the
9 penalties sufficient to cause the Defendant to flee. *Hir*, 517 F.3d at 1090. This
10 factor favors detention.

11 3) *Nature and Seriousness of Danger to the Community*

12 The nature and seriousness of danger to the community that would be posed
13 by Defendant’s release also supports detention. As noted above, the Defendant
14 continued to engage in serious criminal behavior even after law enforcement
15 intervention. On each occasion, substantial quantities of narcotics and firearms
16 were seized from the Defendant. Yet, after bonding out on those state arrests, the
17 Defendant was able to re-engage and obtain even more quantities of narcotics to
18 include deadly Fentanyl laced pills. Given the circumstances surrounding the
19 offenses, it is clear that the Defendant poses a risk to the community.

20 The Defendant has offered no evidence to indicate that she will not continue
21 to engage in drug dealing if released on bail pending trial. Nor has she
22 demonstrated that the conditions of release she proposes will prevent her from
23 doing so. The Defendant will undoubtedly promise the Court he will not engage in
24 further drug dealing; however, “this promise to comply with the law is insufficient
25 to defeat the presumption of danger to the community.” *Christie*, 2010 WL
26 2900371 *4 (citing *Rueben*, 974 F.2d at 587); *see also United States v. Salerno*,
27 481 U.S. 739 (1987) (detention may be ordered where the court finds no condition

1 or combination of conditions could prevent the defendant's continued or future
2 criminal activity); *United States v. Tortora*, 922 F.2d 880, 886 (1st Cir.1990)
3 (observing that release conditions contained "an Achilles' heel ... [where] virtually
4 all of them hinge on the defendant's good faith compliance"). This factor also
5 supports detention.

6 4) *Characteristics of the Defendant*

7 The particulars of the Defendant's character, financial resources, past
8 conduct, criminal history, and warrant history, weigh heavily in favor of detention.
9 A clear indicator of a defendant's risk of flight is that individual's history of non-
10 appearance before this Court and other courts. The Defendant has a history of non-
11 appearance and has also had a prior fugitive warrant issued for her arrest. More
12 significantly are the facts as noted above in regard to her fleeing the area to evade
13 arrest.

14 The United States also maintains significant concerns as the information
15 provided by the Defendant' family as to her recidivist activities. This is consistent
16 with the information derived from this investigation as well as others as to the
17 Defendant's longstanding involvement with drug distribution. The Defendant
18 proposes to release to a clean and sober house and to begin substance abuse
19 treatment. There is however no updated information or any details of this plan or
20 any information as to whether the previous Oxford house and treatment facility are
21 even still available to the Defendant. The clean and sober house is not a secure
22 location nor is outpatient treatment. It is then largely dependent upon the
23 Defendant to remain at those locations and avail herself of those resources. There
24 is simply no indication in this record that the Defendant will do so.

25 The United States understands the Defendant has children and that may be a
26 motivating factor. However, their presence historically has not been sufficient to
27 overcome the Defendant's criminal behavior. It is also appears the Defendant's

1 children have routinely been given over to others in order to allow the Defendant
2 the ability to engage in this conduct. Likewise, having a friend in the community
3 who also has recent criminal history and is a prior drug user, does not provide
4 sufficient stability to overcome the Defendant's aforementioned history and
5 characteristics.

6 Respectfully, given this record, all factors weigh in favor of the Defendant's
7 pre-trial detention in this matter.
8

9 **V. Even Strict Release Conditions are Not Sufficient**

10 As the Ninth Circuit took time to point out, any release conditions contain
11 "an Achilles' heel ... virtually all of them hinge on the defendant's good faith
12 compliance." *Hir*, 517 F.3d at 1092 (internal citations omitted). The Ninth Circuit
13 also noted that release conditions "can be too easily circumvented or manipulated."
14 *Id.* The effectiveness of the release conditions in this case depend entirely on the
15 good faith compliance of the Defendant. The history and characteristics of the
16 Defendant suggest that compliance will not follow no matter the release conditions
17 imposed.
18

19 **VI. Conclusion**

20 Pursuant to 21 U.S.C. § 3142(e), the Defendant is presumed a flight risk and
21 a danger to the community. The totality of the facts of this case substantiate this
22
23 //
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1 presumption. Accordingly, the United States requests the Court maintain the
2 Magistrate Judge's Order on Detention and deny the Defendant's request for
3 release.

4

5 Dated: December 20, 2019.

6

7 William D. Hyslop
8 United States Attorney

9

10 s/ Stephanie Van Marter
11 Stephanie Van Marter
12 Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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